

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KENNETH JENNINGS,

Plaintiff(s),

vs,

LOW INCOME HOUSING INSTITUTE,

Defendant(s).

C07-1476MJB

ORDER FOR DISMISSAL

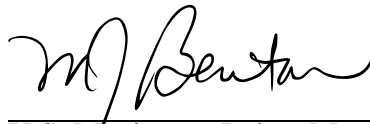
The defendant, the Low Income Housing Institute, (“LHI”), has moved under FCRP 12(b)(6) urging the Court to dismiss the plaintiff’s complaint because it fails to state a claim upon which relief may be granted and the claims are barred by res judicata. Dkt. No. 12. The plaintiff asserts that he has a fundamental constitutional right to safe public housing and that the court should apply a higher level of scrutiny to guarantee this constitutional right.

At issue, in the Court’s view, is the plaintiff’s desire to appeal a Superior Court decision which denied him the right to proceed *in forma pauperis*. LHI argues in its motion to dismiss that absent a violation of a fundamental right, the plaintiff has no right to appeal at public expense. *In re Grove*, 127 Wn.2d 221, 897 P.2d 1252 (1995). Additionally, LHI asserts that the federal claim under “The Federal Housing Act,” is barred by its statute of limitations which is two years. Even if the plaintiff were to have a constitutional right to appeal a denial of *in forma pauperis*, this right is inextricably tied to his civil action under Title 42 U.S.C. Section 3631(a)(1)(A) and (B) which has a two year statute of limitations. Moreover, the federal courts have not recognized the constitutional right to “safe public housing,” *Lindsey v. Normet*, 405 U.S. 56 (1972). Neither has Washington’s Constitution nor its interpretive

1 constitutional law created a such a right. *City of Bremerton v. Widell*, 146 Wash. 2d 561 (2002).

2 Where Washington law does limits an order of indigency to certain types of appeals, plaintiff's  
3 claims fall outside this ambit. (RAP15.2(d)). Thus, his subsequent assertions that he has been denied a  
4 right to appeal at public expense are misplaced. Accordingly, the defendant's motion for dismissal under  
5 FRCP 12(b)(6) is GRANTED and the plaintiff's claims are dismissed.

6 DATED this 17<sup>th</sup> day of December 2007.

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10 U.S. Magistrate Judge, Monica J. Benton  
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